

Federal Trade Commission

§ 680.3

and Accu-rate Credit Transactions Act of 2003, which (by adding section 624 to Fair Credit Reporting Act) regulates the use, for marketing solicitation purposes, of consumer information provided by persons affiliated with the person making the solicitation.

(b) *Scope.* This part applies to any person over which the Federal Trade Commission has jurisdiction that uses information from its affiliates for the purpose of marketing solicitations, or provides information to its affiliates for that purpose.

§ 680.2 Examples.

The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part. Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issue that may arise in this part.

§ 680.3 Definitions.

As used in this part:

(a) *Act.* The term “Act” means the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

(b) *Affiliate.* The term “affiliate” means any company that is related by common ownership or common corporate control with another company.

(c) *Clear and conspicuous.* The term “clear and conspicuous” means reasonably understandable and designed to call attention to the nature and significance of the information presented.

(d) *Common ownership or common corporate control.* The term “common ownership or common corporate control” means a relationship between two companies under which:

(1) One company has, with respect to the other company:

(i) Ownership, control, or the power to vote 25 percent or more of the outstanding shares of any class of voting security of a company, directly or indirectly, or acting through one or more other persons;

(ii) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of a company; or

(iii) The power to exercise, directly or indirectly, a controlling influence

over the management or policies of a company, as the Commission determines; or

(2) Any person has, with respect to both companies, a relationship described in paragraphs (d)(1)(i) through (d)(1)(iii) of this section.

(e) *Company.* The term “company” means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(f) *Concise*—(1) *In general.* The term “concise” means a reasonably brief expression or statement.

(2) *Combination with other required disclosures.* A notice required by this part may be concise even if it is combined with other disclosures required or authorized by federal or state law.

(g) *Consumer.* The term “consumer” means an individual.

(h) *Eligibility information.* The term “eligibility information” means any information the communication of which would be a consumer report if the exclusions from the definition of “consumer report” in section 603(d)(2)(A) of the Act did not apply. Eligibility information does not include aggregate or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(i) *Person.* The term “person” means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(j) *Pre-existing business relationship*—(1) *In general.* The term “pre-existing business relationship” means a relationship between a person, or a person’s licensed agent, and a consumer based on—

(i) A financial contract between the person and the consumer which is in force on the date on which the consumer is sent a solicitation covered by this part;

(ii) The purchase, rental, or lease by the consumer of the persons’ goods or services, or a financial transaction (including holding an active account or a policy in force or having another continuing relationship) between the consumer and the person, during the 18-month period immediately preceding the date on which the consumer is sent a solicitation covered by this part; or

(iii) An inquiry or application by the consumer regarding a product or service offered by that person during the three-month period immediately preceding the date on which the consumer is sent a solicitation covered by this part.

(2) *Examples of pre-existing business relationships.* (i) If a consumer has an existing loan account with a creditor, the creditor has a pre-existing business relationship with the consumer and can use eligibility information it receives from its affiliates to make solicitations to the consumer about its products or services.

(ii) If a consumer obtained a mortgage from a mortgage lender, but refinanced the mortgage loan with a different lender when the mortgage loan came due, the first mortgage lender has a pre-existing business relationship with the consumer and can use eligibility information it receives from its affiliates to make solicitations to the consumer about its products or services for 18 months after the date the outstanding balance of the loan is paid and the loan is closed.

(iii) If a consumer obtains a mortgage, the mortgage lender has a pre-existing business relationship with the consumer. If the mortgage lender sells the consumer's entire loan to an investor, the mortgage lender has a pre-existing business relationship with the consumer and can use eligibility information it receives from its affiliates to make solicitations to the consumer about its products or services for 18 months after the date it sells the loan, and the investor has a pre-existing business relationship with the consumer upon purchasing the loan. If, however, the mortgage lender sells a fractional interest in the consumer's loan to an investor but also retains an ownership interest in the loan, the mortgage lender continues to have a pre-existing business relationship with the consumer, but the investor does not have a pre-existing business relationship with the consumer. If the mortgage lender retains ownership of the loan, but sells ownership of the servicing rights to the consumer's loan, the mortgage lender continues to have a pre-existing business relationship with the consumer. The purchaser

of the servicing rights also has a pre-existing business relationship with the consumer as of the date it purchases ownership of the servicing rights, but only if it collects payments from or otherwise deals directly with the consumer on a continuing basis.

(iv) If a consumer applies to a creditor for a product or service that it offers, but does not obtain a product or service from or enter into a financial contract or transaction with the creditor, the creditor has a pre-existing business relationship with the consumer and can therefore use eligibility information it receives from an affiliate to make solicitations to the consumer about its products or services for three months after the date of the application.

(v) If a consumer makes a telephone inquiry to a creditor about its products or services and provides contact information to the creditor, but does not obtain a product or service from or enter into a financial contract or transaction with the creditor, the creditor has a pre-existing business relationship with the consumer and can therefore use eligibility information it receives from an affiliate to make solicitations to the consumer about its products or services for three months after the date of the inquiry.

(vi) If a consumer makes an inquiry to a creditor by e-mail about its products or services, but does not obtain a product or service from or enter into a financial contract or transaction with the creditor, the creditor has a pre-existing business relationship with the consumer and can therefore use eligibility information it receives from an affiliate to make solicitations to the consumer about its products or services for three months after the date of the inquiry.

(vii) If a consumer has an existing relationship with a creditor that is part of a group of affiliated companies, makes a telephone call to the centralized call center for the group of affiliated companies to inquire about products or services offered by the insurance affiliate, and provides contact information to the call center, the call constitutes an inquiry to the insurance affiliate that offers those products or services. The insurance affiliate has a

pre-existing business relationship with the consumer and can therefore use eligibility information it receives from its affiliated creditor to make solicitations to the consumer about its products or services for three months after the date of the inquiry.

(3) *Examples where no pre-existing business relationship is created.* (i) If a consumer makes a telephone call to a centralized call center for a group of affiliated companies to inquire about the consumer's existing account with a creditor, the call does not constitute an inquiry to any affiliate other than the creditor that holds the consumer's account and does not establish a pre-existing business relationship between the consumer and any affiliate of the account-holding creditor.

(ii) If a consumer who has a loan account with a creditor makes a telephone call to an affiliate of the creditor to ask about the affiliate's retail locations and hours, but does not make an inquiry about the affiliate's products or services, the call does not constitute an inquiry and does not establish a pre-existing business relationship between the consumer and the affiliate. Also, the affiliate's capture of the consumer's telephone number does not constitute an inquiry and does not establish a pre-existing business relationship between the consumer and the affiliate.

(iii) If a consumer makes a telephone call to a creditor in response to an advertisement that offers a free promotional item to consumers who call a toll-free number, but the advertisement does not indicate that creditor's products or services will be marketed to consumers who call in response, the call does not create a pre-existing business relationship between the consumer and the creditor because the consumer has not made an inquiry about a product or service offered by the creditor, but has merely responded to an offer for a free promotional item.

(k) *Solicitation*—(1) *In general.* The term "solicitation" means the marketing of a product or service initiated by a person to a particular consumer that is—

(i) Based on eligibility information communicated to that person by its affiliate as described in this part; and

(ii) Intended to encourage the consumer to purchase or obtain such product or service.

(2) *Exclusion of marketing directed at the general public.* A solicitation does not include marketing communications that are directed at the general public. For example, television, general circulation magazine, and billboard advertisements do not constitute solicitations, even if those communications are intended to encourage consumers to purchase products and services from the person initiating the communications.

(3) *Examples of solicitations.* A solicitation would include, for example, a telemarketing call, direct mail, e-mail, or other form of marketing communication directed to a particular consumer that is based on eligibility information received from an affiliate.

(l) *You* means a person described in § 680.1(b).

§§ 680.4–680.20 [Reserved]

§ 680.21 Affiliate marketing opt-out and exceptions.

(a) *Initial notice and opt-out requirement*—(1) *In general.* You may not use eligibility information about a consumer that you receive from an affiliate to make a solicitation for marketing purposes to the consumer, unless—

(i) It is clearly and conspicuously disclosed to the consumer in writing or, if the consumer agrees, electronically, in a concise notice that you may use eligibility information about that consumer received from an affiliate to make solicitations for marketing purposes to the consumer;

(ii) The consumer is provided a reasonable opportunity and a reasonable and simple method to "opt out," or prohibit you from using eligibility information to make solicitations for marketing purposes to the consumer; and

(iii) The consumer has not opted out.

(2) *Example.* A consumer has a homeowner's insurance policy with an insurance company. The insurance company furnishes eligibility information about the consumer to its affiliated creditor. Based on that eligibility information, the creditor wants to make a solicitation to the consumer about its home